

STATE ALLOCATION BOARD

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Date: October 24, 2003

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Friday, November 7, 2003 (9:30 am - 3:30 pm) at 1500 Capitol Ave., in conference room(s) 72.148C and 72.149B (Sacramento, CA).

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Charter Schools Facilities Program (SB 15)
Discussion of eligibility determination, per-pupil project caps, site acreage limitations and other Charter program issues
3. Critically Overcrowded School Program
Discussion of the factor for inflation, change in site "median cost" calculation, use of grants and other COS program refinements
4. Lease Lease Back and Other Delivery Methods
Review of previous discussions, including the September item to the SAB, presentation of OPSC position on the use of EC 17406
5. Financial Hardship Criteria (SB 303)
Discussion of the 60% debt requirement

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock", with a long horizontal flourish extending to the right.

BRUCE B. HANCOCK
Chairperson

BBH:LM:pj

State Allocation Board Implementation Committee
November 7, 2003

Charter School Facility Program

At the October 3, 2003 State Allocation Board (SAB) Implementation Committee meeting, changes to the Charter School Facility Program (CSFP) based on Senate Bill 15 and recommendations from the last funding cycle were discussed. Listed below are the significant issues that were discussed at the meeting:

1. There was discussion regarding the definition for charter school general location to determine median cost for site acquisition and using the proposed location of the charter school project as identified in the chartering agreement. A concern was raised that the chartering agreements may not identify a proposed location. The Office of Public School Construction (OPSC) proposes to add a section to the form in which the charter school would identify the proposed location (intersection or street address) as a starting point for the three mile radius to determine median cost.
2. There was discussion regarding the definitions for a small, medium and large charter school. There was a proposal as follows: Small Charter School shall be a school with pupils 175 or under, Medium Charter School shall be a school with pupils between 176-350 and a Large Charter School shall be a school with pupils over 351. The definitions have been adjusted as noted above. (See Attachment D)
3. There was a discussion regarding the Urban Allowance. With the revised acreage numbers based on the California Department of Education's (CDE) recommendation, which is a recommendation for Charter School projects, the urban allowance would be based on the "new" recommended site size. Concern was expressed that this would lessen the urban allowance even though the district still had the added cost of building on a small site. CDE's recommended site size is at the heart of the urban calculation, therefore when you change the recommended site size for charter school projects it is appropriate to augment the urban calculation accordingly.
4. There was a discussion and proposal to re-look at the definition of low-income to determine if there is a more equitable measure to use for the purposes of calculating preference points for the CSFP. Further discussions with CDE have lead us to leaving the definition as it currently is stated in the regulations, for the following reasons:

- CDE has stated that a direct funded charter school may submit the free/reduced lunch documentation and not actually be serving lunches because in some cases they may not have a cafeteria; it is simply a tool used to measure the number of kids that qualify as Title 1. These pupils are assigned a "free/reduced" lunch percentage on CDE's listing - and we would then be able to use these numbers to calculate preference points.
- Free/reduced lunch was also used as a measure to determine "low-income" for SB 740, which assists charter schools with funding for the cost of leasing non-district owned facilities.

There may be some perceived flaws with using Free/Reduced Lunch as a measure for the program, such as a small amount of kids that could be eligible but for some reason do not submit the forms; however we feel that this measure is the most equitable and used in other programs administer by the State to classify low-income. Additionally, if we were to allow a charter school to submit other evidence for meeting the income standards, there would be no set methodology across the board to calculate preference points, which determines who will be funded.

5. There was also a discussion regarding the filing period for the next round of funding. The filing period for the potential funding allocated in the 2004 Bond is set in regulation. Upon review of the timelines under the current regulation, staff would need to begin accepting applications at the beginning of January 2004. Given the complexity of the issues and the various organizations involved, both the OPSC and CSFA support a change in the regulation to amend the filing period. At the October SAB meeting, the Board approved amendments to the filing period under an emergency basis. The filing period for the next round of funding will be as follows:

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 during a period of 120 calendar days beginning 10 days after an election authorizing additional funding.

Discussion Items:

Total Project Funding Cap

From the last meeting, the OPSC has made one revision to the total project funding cap proposal and has incorporated several items for discussion resulting from subsequent meetings with charter school advocates. A review of the high school cap was conducted and as a result of receiving average enrollment information the high school cap was revised based on a 500-pupil high school. It was revised from \$15 million to \$10 million. (See Attachment A for further detail.)

New Construction Eligibility

There are two issues that surround new construction eligibility as it relates to the charters those charters schools that want to apply yet the district has not established eligibility and those charter schools that apply and current enrollment information is not on file for the district. SB15 states clearly that that the Board shall fund only new construction based on new construction eligibility based on current enrollment data.

If a district does not have established new construction eligibility, a mechanism does not exist to require districts to establish new construction eligibility and therefore a charter would not be eligible to make an application for facilities funding. If the charter school would like to pursue an application and eligibility has not been established, we would encourage the charter school to work with the school district at the local level through the school board and the local community, and have the issue resolved locally.

As stated previously, in order for the SAB to provide a preliminary apportionment to a charter school, the school district's new construction eligibility must be based on current enrollment data. This is regardless of which entity filed the application (charter on its own behalf or school district on behalf of a charter). Charter schools submitting an application on its own behalf should work with the school district to ensure that current enrollment figures are on file with the OPSC.

Attachment B – Summary of Proposed Regulatory Amendments

Attachment C – Proposed Regulation Text

ATTACHMENT A – Total Project Funding Caps
SAB Implementation Committee, November 7, 2003
Charter School Facility Program
Regulation Changes

BACKGROUND

SB 15 requires the SAB to establish per project funding caps to maximize the number of projects that may be given a preliminary apportionment.

DISCUSSION

The law leaves it up to the SAB and CSFA to determine the per project funding caps on the total project cost, not just the State share. The following option will propose that the caps be based on the grade level of the project, but not include costs associated with site acquisition. In some cases we realize that due to the nature of the charter schools, the traditional K-6, 7-8, and 9-12 caps may need to be adjusted and has been addressed in the proposal outlined below. The statute also required limitations to the amount of acreage that can be requested.

PROPOSAL

Basic Rule:

The OPSC proposes the following total project funding caps, which are exclusive of site acquisition costs:

K-6: \$5 million

7-8: \$7 million

9-12: \$10 million (revised based on a 500 pupil high school)

The above numbers were generated from Attachment A1, and focus on the base grant for the project, site development at \$70,000 per acre (maximum acres used), and costs associated with initiating and enforcing a Labor Compliance Program.

Projects that contain multiple grade levels will receive the cap for the highest-grade level served provided all grades within that group are being served. If all grades are not being served within that group, the cap for the project will be based where the majority of the pupils are being requested.

Previously Approved Projects:

Projects that received a preliminary apportionment from the SAB on July 2, 2003 would not be subject to the cap. However any projects outside of the six that receive a preliminary apportionment due to subsequent funding from the 2002 bonds will be required to adhere to the cap limits.

ITEMS FOR DISCUSSION

The following is a list of suggestions, alternatives, and issues to resolve that have been discussed since the last meeting and are being put forth for further discussion:

- **Site Acreage Cap** – The current proposal recommends a reduction in recommended site size calculation by half to be specific for charter schools. An alternative suggestion is to set the recommended site size at 40 percent of a “traditional” school, with the option to increase to 50 percent if a site is not available or an approval site from CDE is not found at the time the preliminary apportionment application is submitted. A concern with this suggestion is that at the time of preliminary apportionment more than likely the site is unknown and the process for CDE approval has not begun.
- **Toxic Remediation** – A proposal to set aside funds for hazardous material clean-up for projects at the time the project is converted to a final apportionment when the costs for clean-up are known or estimated. The issue is being reviewed with legal counsel to see if the statute permits a set aside of funds.
- **Inflator Factor** – Reduce the inflator factor to six percent, which would equate out to three percent for the first and second year and not provide an increase for the third and fourth years. The intent is to encourage conversion of projects faster.
- **Relocation and Condemnation** – Concern was expressed that the set aside of funds (21 percent of the site value) was too much and that it is highly unlikely for charter schools to utilize this method of acquisition. If 21 percent is too high should it be reduced? Could some other method be used or standards developed specific to charter schools that must be met in order to request relocation costs?
- **Increasing Efficiencies** – Essentially this proposal focuses around building more for less, that would encourage cost reduction regardless of the size of the project. Projects that are smaller size would be unconcerned with the project funding caps put in place and would have no incentive for reducing costs, where as larger project that is subject to the cap may need to make some difficult decisions on project design. A proposal was put forth that would require a charter school to house 1.25 pupils for every pupil grant worth of eligibility used.
- **High School Project Cap** – Two suggestions regarding this cap were provided on that would be based on a 600 pupil high school and one based on the original 750 pupil high school.

ATTACHMENT C

PROPOSED AMENDMENTS TO THE
CHARTER SCHOOL FACILITY PROGRAM
SB 15 AND OTHER REGULATORY AMENDMENTS

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

...
“Authority” shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...
“Charter School” shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

...
“Charter School General Location” shall mean a three-mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...
“Classroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...
“Final Charter School Apportionment” shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...
“Financially Sound” shall have the meaning set forth in Education Code Section 17078.52(e)-(d)(4) and Title 4, California Business Regulations commencing with Section 10152, et al.

...
“Form SAB 50-09” means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), which is incorporated by reference.

...
“Large Charter School” shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...
“Low-income” shall be the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price Meals data on file at the CDE. those charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.

...
“Medium Charter School” shall be defined as a school with an enrollment of ~~404~~ 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Non-profit entity” means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...

“Overcrowded School District” for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

....

“Preliminary Charter School Application” means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

“Preliminary Charter School Apportionment” means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....

“Region One” shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

“Region Two” shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

“Region Three” shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

“Region Four” shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...

“Rural Area” shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...

“Small Charter School” shall be defined as a school with an enrollment of not more than ~~400~~ 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Suburban Area” shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...

“Urban Area” shall be as a school with a locale code of one as classified by the NCES.

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17280, and 56026, Education Code. Section 53311, Government Code and Section 1771.5, Labor Code.

Article 14. Charter School Facilities Program

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following conditions are met: ~~the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.~~

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and.
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.163.1. Preliminary Charter School Apportionment Determination.

The Preliminary Charter School Apportionment shall be equal to the sum of the following:

(a) The amounts shown below for each pupil included in a Preliminary Charter School Application:

(1) \$5,226.82 for each elementary school pupil.

(2) \$5,533.65 for each middle school pupil.

(3) \$7,225.94 for each high school pupil.

(4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.

(c) An amount equal to one-half of the site acquisition value determined in Section 1859.163.2.

(d) An amount for site development cost determined, at the option of the district, by one of the following:

(1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.

(2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.

(3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.

(e) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.

(f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:

(1) The district has requested an increase for multilevel construction pursuant to (b) above.

(2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size for Charter Schools determined by multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .008875 for elementary school pupils, .0105 for middle school pupils and .01236 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.

(3) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.

(g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

(h) For purposes of Charter School projects, an amount equal to the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows:

(1) Subtract 1.31 from the January Class B Construction Cost Index in effect at the time of Preliminary Apportionment.

- (2) Divide the difference determined in (1) by 1.31. Round to four decimal places.
- (3) Divide the quotient in (2) by the number of years between January 1999 and the January Class B Construction Cost Index in (1) above.
- (4) Multiply the quotient in (3) by four. Round to two decimal places.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
 - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.
 - (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed useable acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
 - (1) 21 percent of the value determined in (a).
 - (2) The sum of the following:
 - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
 - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
 - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.

- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2), above.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at the Charter School or school district where the Charter School is or will be located that receive/free reduced lunch, whichever is higher. if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-91 92 %	36
92-100% <u>93</u>	40 <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-5%	4
6-9%	8
10-13%	12
14-17%	16
18-21%	20
22-27%	24
28-34 %	28
35-41%	32
42-50%	36
51% and above	40

Percentage Overcrowded	Preference Points Assigned
2-9%	4
10-13%	8
14-16%	12
17-19%	16
20-22%	20
23-25%	24
26-33 %	28
34-41%	32
42-49%	36
50% and above	40

- (c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.

A Charter School may request an advance release of funds from a Preliminary Charter School Apportionment for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a), (b), (d), (e), (f), and (g).

- (b) A separate advance release of funds for site acquisition for an amount, not to exceed the Preliminary Charter School Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-09 pursuant to Section 1859.160.

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial sound status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Charter School Preliminary Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the district may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: 17070.35 and 17078.64, Education Code

Reference: 17078.53, Education Code

Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
 - (1) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.
 - (2) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Fund in the 2002 Charter School Facilities Account pursuant to this Subsection (a), and not used under (b)(1), or (b)(2), or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 presented to the Board but were not funded due to insufficient funds, shall be used by the Board for other Charter School facility projects .

Any funds deposited into the Unrestricted Fund in the 2004 Charter School Facilities Account pursuant to Subsection (a), and not used under (b)(1) or (b)(2), shall be used by the Board for other Charter School facility projects.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

SB 15

CHARTER SCHOOL FACILITIES PROGRAM

TOTAL PROJECT COST CAP

ATTACHMENT A1

This sample uses general numbers of an elementary, middle, and high school charter.

Project Details	Type of Project		
	K-6	7-8	9-12
Pupil Grants	350	450	500
Classrooms	14	17	19
Acres*	3.1	4.75	6.18

Base Grant	\$2,054,500.00	\$2,796,300.00	\$4,058,000.00
Site Development Costs (using \$70,000/acre)	\$217,000.00	\$332,500.00	\$432,600.00
Subtotal 1	\$2,271,500.00	\$3,128,800.00	\$4,490,600.00

11% Inflator Factor**	\$249,865.00	\$344,168.00	\$493,966.00
Subtotal 2	\$2,521,365.00	\$3,472,968.00	\$4,984,566.00

Labor Compliance Program Grant	\$19,668.37	\$22,666.20	\$28,829.00
Total State Share	\$2,541,033.37	\$3,495,634.20	\$5,013,395.00
Total Project Cost	\$5,082,066.74	\$6,991,268.40	\$10,026,790.00

*The acreage amounts have been calculated using the new recommended site size.

**The inflator factor is estimated until the class B index is available in January 2004.

Attachment B
Summary of Revised Charter School Facility Program Regulations
SAB Implementation Committee, November 7, 2003

Section	Current Practice	Proposed Change	Justification for Change
DEFINITIONS "CHARTER SCHOOL GENERAL LOCATION" Reg Section 1859.2	In determining a median cost for site acquisition, the general location was based on the Critically Overcrowded Schools (COS) Program using source schools.	Create new definition "Charter School General Location" to mean a three-mile radius from the present or proposed location of the Charter School project as identified on the application.	The Charter School program differs from the COS that it does not use source schools. This definition will define the area to be used for the median cost calculation and provide a more accurate assessment of the real estate transactions in and around the proposed general location.
DEFINITIONS "FINANCIALLY SOUND" Reg Section 1859.2	n/a	Add reference to California School Finance Authority (CSFA) regulations.	Clarification language to properly reference both sets of regulations.
DEFINITIONS "LARGE CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is greater than 351.	A school in which the enrollment is greater than 351.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "MEDIUM CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is between 101 to 350.	A school in which enrollment is between 176-350.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "REGION 2" Reg Section 1859.2	Tulare county is in Region 3.	Move Tulare county into Region 2.	Tulare was inadvertently left in Region 3 when the distribution was originally done and demographically should have been placed in Region 2 from the onset of the program.
DEFINITIONS "SMALL CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is not more than 100.	A school in which enrollment is not more than 175.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
ADJUSTMENTS TO THE NEW CONSTRUCTION	There is currently no requirement for school district's to update their enrollment when a Preliminary Charter School Application is	Require school district's to update their enrollment by completing a new 50-01 within 30 calendar days of receipt of the Preliminary	As required by legislation – SB 15

BASELINE ELIGIBILITY Reg Section 1859.51(e)	submitted by a charter school directly.	Charter School Application.	
PRELIMINARY APPORTIONMENT ELIGIBILITY CRITERIA Reg Section 1859.162	n/a	New legislation requires that prior to the end of the filing period that the applicant must have a charter approved or a material revision to their existing charter approved for that specific school in which they are applying. Prior to the submission of the Preliminary Charter School Application that the above must be in place. This will be incorporated into the Preliminary Charter School Application form and the applicant will be required to report the date of the charter approval or of the material revision.	As required by legislation – SB 15
Section	Current Practice	Proposed Change	Justification for Change
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The preliminary apportionment calculation originally referenced the calculation used in the critically overcrowded program.	The preliminary apportionment calculation has been incorporated into the charter school section of the regulations.	Clarification and ability to modify certain areas of the calculations, which are specific to the charter school program.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION “SMALL SIZE PROJECT” Reg Section 1859.163.1 (e)	This allowance is called the Small New School Allowance and is provided if the project meets the requirements of Section 1859.83(c).	Change to allow the charter school to request a small size project, which is a project that will house no more than 200 pupils, as provided in 1859.83(b).	The basis for this change is because the New School Allowance was intended for projects that were going to be built in phases, but needed funding to provide the core facilities up front. When subsequent applications come in to add classrooms, the grant is offset. Due to the nature of the charter school program we don't envision this happening and feel that the small size project is more applicable.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION “USEABLE ACRES”	In the last round, useable acreage was determined by using CDE recommended site size as established for the COS program.	Per the new legislation, CDE has provided new numbers which are exactly half of what is used in the COS program in order to limit the amount of acreage for which each applicant can apply.	As required by legislation – SB15

Reg Section 1859.163.1(f)(2)			
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The Preliminary Charter School Application currently includes a certification for the Labor Compliance Program.	Regulation language has been included to incorporate the Labor Compliance Program grants.	At the July 2, 2003 State Allocation Board meeting the grants for the LCP were approved and we have incorporated the regulation language to include this reference.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT SITE ACQUISITION VALUE Reg Section 1859.163.2 (3)(b)	Costs for hazardous material clean up are automatically calculated in the site acquisition costs and are provided at 150% of the appraisal or median cost.	Edits will be made to the form to allow the applicant to include a lesser amount for toxic remediation.	Cases may exist where an applicant knows that they will not need the 150% amount for clean up.
CALCULATION OF PREFERENCE POINTS Reg Section 1859.164.1 (a) and (b)	n/a	We have adjusted the low-income scales and the overcrowded scales to add more ranges.	This adjustment was done to allow for more variance and to avoid having projects end up with the same preference points.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT FUND RELEASE Reg Section 1859.164.2	n/a	Regulations have been written to allow for advanced release of funds for separate design equal to 40 percent of the total project cost and/or an advance fund release for site acquisition.	As required in legislation – SB 15

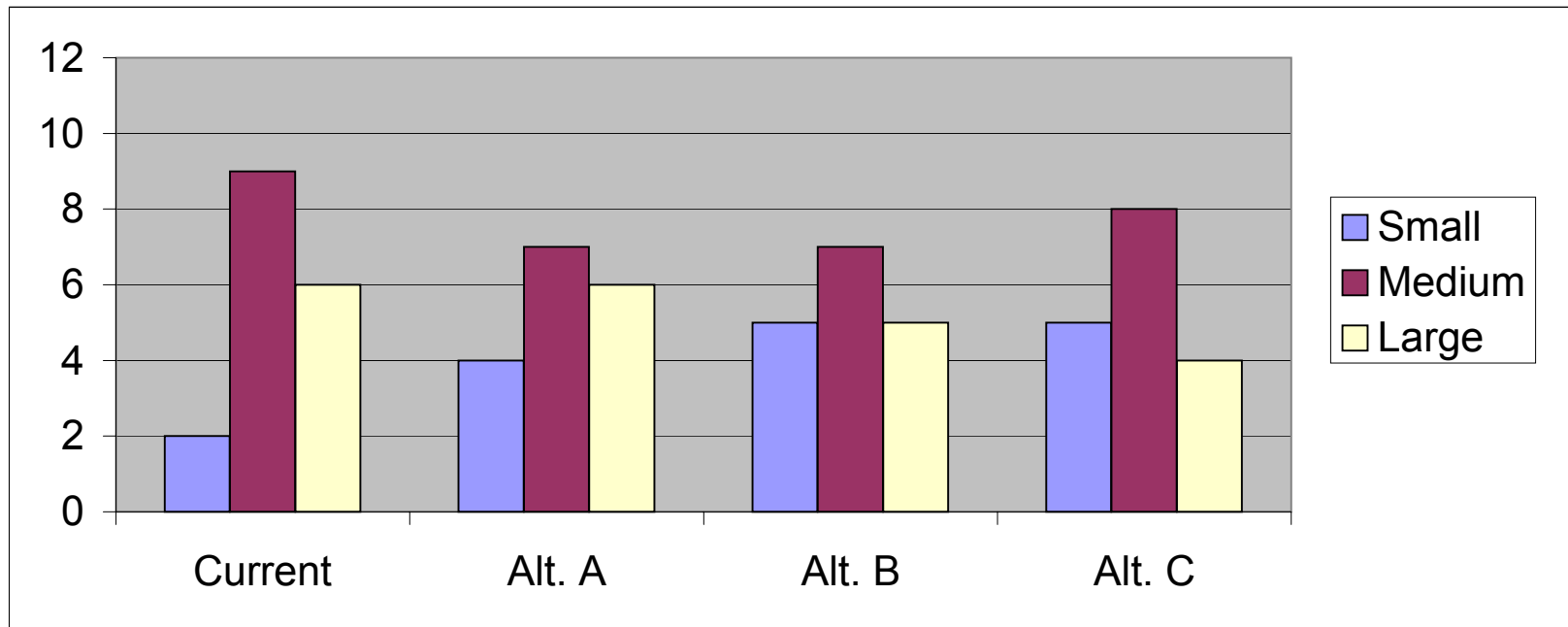
Section	Current Practice	Proposed Change	Justification for Change
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Incorporate the language for the unrestricted Fund to include the 2004 Charter School Facilities Account.	As required by legislation – SB 15
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2002 Charter School Facilities Account or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 which were not funded due to insufficient funds shall be used by the Board for other Charter School facility projects.	Per SAB Action on July 2, 2003 and SB 15.
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2004 Charter School Facilities Account shall be used by the Board for other Charter School facility projects.	As required by legislation – SB 15

Attachment D

Review of Large, Medium, and Small Size Projects form First Round of Applicants

District	County	Charter School	Current Regs >100, 101-350, 350+	Alternative A >175, 176-350, 351+	Alternative B >250, 251-500, 501+	Alternative C >250, 251-750, 750+
STOCKTON UNIFIED	SAN JOAQUIN	STOCKTON CHARTER	Medium	Medium	Medium	Medium
OAKLAND UNIFIED	ALAMEDA	OAKLAND CHARTER	Medium	Medium	Medium	Medium
CENTINELA VALLEY UNION HIGH	LOS ANGELES	ANIMO LEADERSHIP HIGH	Large	Large	Medium	Medium
SANTA ANA UNIFIED	ORANGE	ORANGE COUNTY HIGH SCHOOL OF THE ARTS	Large	Large	Large	Large
LOS ANGELES UNIFIED	LOS ANGELES	MONTAGUE STREET ELEM.	Large	Large	Large	Large
WHEATLAND UNION HIGH	YUBA	ACADEMY FOR CAREER EDUCATION	Small	Small	Small	Small
COLTON JOINT UNIFIED	SAN BERNARDIN	LAS BANDERAS ACADEMY CHARTER	Medium	Medium	Medium	Medium
LOS ANGELES UNIFIED	LOS ANGELES	CAMINO NUEVO CHARTER ACADEMY - COMMONWEALTH	Large	Large	Large	Large
LOS ANGELES UNIFIED	LOS ANGELES	WATTS LEARNING CENTER (CHARTER)	Medium	Medium	Small	Small
MARIN COUNTY OFFICE OF EDUCATION	MARIN	PHOENIX ACADEMY	Small	Small	Small	Small
LOS ANGELES UNIFIED	LOS ANGELES	ACCELERATED CHARTER ELEMENTARY SCHOOL	Medium	Medium	Medium	Medium
INGLEWOOD UNIFIED	LOS ANGELES	ANIMO INGLEWOOD CHARTER HIGH	Medium	Small	Small	Small
NATOMAS UNIFIED	SACRAMENTO	NATOMAS CHARTER #19	Large	Large	Large	Medium
SEQUOIA UNION HIGH	SAN MATEO	SEQUOIA CHARTER	Medium	Medium	Medium	Medium
LOS ANGELES UNIFIED	LOS ANGELES	VAUGHN HIGH SCHOOL TEACHING ACADEMY	Large	Large	Large	Large
LODI UNIFIED	SAN JOAQUIN	LODI CHARTER	Medium	Medium	Medium	Medium
ELK GROVE UNIFIED	SACRAMENTO	ELK GROVE CHARTER	Medium	Small	Small	Small

	Small	Medium	Large	
Current	2	9	6	17
Alt. A	4	7	6	17
Alt. B	5	7	5	17
Alt. C	5	8	4	17



State Allocation Board Implementation Committee
November 7, 2003

Critically Overcrowded School Facilities

Purpose of Report

This issue paper presents certain staff and district concerns that came to light during the initial filing period for the Critically Overcrowded School (COS) Facilities program. To that end it discusses options and regulation modifications for the COS program regarding the following issues:

- Use of Grants to be utilized on a COS project
- Hazardous Waste Removal for Existing Sites, with evidence of necessary clean-up
- Inflation Factor percentage allowance determination

1. Use of Grants to be utilized on a COS project

Background Information

For regular SFP new construction projects, districts may utilize pupil grants at different grade levels or exceeding the pupil capacity of the project, pursuant to Sections 1859.77.2 and 1859.77.3. Currently the COS program does not explicitly provide for a Use of Grants (UOG) situation.

Issue

School districts maintain that at certain times they have a need to utilize UOG in order to complete their projects. Some districts were not aware that they could submit a Preliminary Application requesting to utilize a UOG during the initial filing period. For this reason, these districts did not apply for the COS program and were not able to take advantage of the provisions of the COS program. These districts had a demonstrated need to relieve overcrowding which may have been met by using pupil grants at different grade levels than the project to build the necessary classrooms.

To avoid uncertainty among districts, the OPSC believes that the COS regulations should be updated to clarify the option of utilizing a UOG request when submitting a Preliminary Application. Since the Final Apportionment at the time of conversion will be subject to all the components and requirements of a regular SFP new construction project, it would seem to be consistent to make available a UOG provision at the Preliminary Apportionment period. The UOG provision would naturally be restricted to borrowing pupil grants from different grade levels than the project and would not utilize excess grants, as described in Section 1859.77.3(a). The criterion for using excess grants includes the construction of subsidiary facilities, which is in direct conflict of the purpose of the COS program, to provide classrooms.

Recommendation

Add a reference to the Use of Grants (Section 1859.77.3(b) only) to the SAB Form 50-08 instructions, clarifying that a district may borrow pupils from another grade level to construct classrooms at another grade level but may not include a request for excess pupil grants. Districts would still have to qualify for a UOG at the time of the conversion.

2. Hazardous Waste Removal for Existing Sites, with evidence of necessary clean-up (Regulation Section 1859.145.1):

Background Information

The COS program currently specifies that an allowance for hazardous material/waste removal and remediation costs is only available for projects requesting site acquisition for a new site or to expand an existing site. The allowance is calculated at one-half times the property value as determined by Regulation Section 1859.145.1.

Section 1859.74.4(a) for SFP new construction projects states in pertinent part that, "With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide funding... for the necessary hazardous materials/waste removal and/or remediation costs on an existing school site ... if all the following are met:

- (1) The New Construction Grant request is for additional school facilities on an existing school site.
- (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
- (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site has a closed school that will again be used as a functioning school.
- (4) The hazardous material clean-up costs are required by the DTSC."

Issue

OPSC staff believes that the COS program should permit similar allowances to the regular SFP new construction program to ensure that an adequate Preliminary Apportionment is given to the districts in need of hazardous waste removal on existing sites. The costs for clean-up can be significant, even on sites that are currently owned and exist as a functioning school, and an amount should therefore be included on the Preliminary Apportionment. The proposed regulation change is shown on Attachment A.

Recommendation

Staff believes that the COS program could provide a reservation of funding for hazardous waste removal on existing school sites, if a district can show evidence that clean-up is necessary and also meets all of the criteria given in Section 1859.74.4(a). The amount of the allowance would be calculated the same way as it is in Section 1859.74.4(b), equaling one-half times all of the eligible clean-up costs shown in that regulation section.

3. Inflation Factor percentage allowance determination (Regulation Section 1859.145(h):

Background Information

The initial COS Program Preliminary Apportionment provided an increase of twelve percent to the estimated proposed project amount, less the Labor Compliance Program allowance, if applicable. This inflation factor serves to mimic the Class B construction cost index increase in costs of constructing a school and allows for a more accurate reservation of funds for the conversion to the future Final Apportionment. The factor was calculated by examining the Class B construction cost index and the pupil grant amounts increases between August 1998 and January 2002, and determining the average total increase over a four year period. This average was found to be 11.71 percent and was rounded up to 12 percent for purposes of the initial COS program application period. The OPSC annually adjusts the allowance amounts in the various programs administered to account for Class B construction cost index changes.

Issue

The inflation factor percentage of 12 percent was only valid for the first application filing period, ending May 1, 2003. For each subsequent filing period of the COS program, the percentage amount has to be re-evaluated to account for Class B construction cost index changes. If the construction cost index is examined for increases from January 1999 to January 2003, it can be determined that the average cost increase over a four year period is approximately 11.45 percent, which is rounded down to 11 percent. For future filing periods after May 1, 2003, the inflation percentage would be generated by determining the total percentage increase between cost indices in January 1999 and the January of the year of apportionment, divide by the number of years examined to find an average yearly increase, and multiply by four to give an average increase over a four year period.

There are two alternatives to consider:

- 1) Continue using an inflation factor of 12 percent for the 2004 COS filing period; however this does not take into account the most current Class B cost index information.
- 2) Apply an inflation factor for the 2004 COS filing period and subsequent filing periods, as determined above, to give an accurate reservation amount at the Preliminary Apportionment stage.

Recommendation

Staff believes that it is necessary for the COS program to continue to provide an inflation factor allowance on the Preliminary Apportionment. The amount as determined in Alternative Two seems to be adequate for the purposes of the COS program since this factor is applied over the entire project, including site acquisition and includes the most recent Class B construction cost index information. The proposed regulation change is shown on Attachment A.

ATTACHMENT A

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 5.5. Regulations Relating to the Leroy F. Greene School Facilities Act of
1998:
(School Facility Program)

Article 13. Critically Overcrowded School Facilities

Section 1859.140. General (Preliminary Apportionment).

A district seeking a Preliminary Apportionment pursuant to the provisions of Education Code Sections 17078.10 through 17078.30 for new construction shall complete and file a Form SAB 50-08.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.10 and 17078.22, Education Code.

Section 1859.141. Preliminary Application Submittals.

The Board shall accept Preliminary Applications as follows:

- (a) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100620(a)(5), shall complete and submit Form SAB 50-08 between November 6, 2002 and May 1, 2003.
- (b) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100820(a)(3), shall complete and submit Form SAB 50-08 between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing the funding.

After the Board has approved a Preliminary Apportionment for a Preliminary Application submitted as provided in (a) and/or (b), a district seeking an advance release of funds for site acquisition pursuant to Section 1859.153(b) or (c), shall be required to submit an additional Form SAB 50-08, to the OPSC, to determine eligible site acquisition costs. A district seeking an advance release of funds for design, engineering, and other pre-construction project costs pursuant to Section 1859.153(a), shall not be required to submit an additional Preliminary Application, as otherwise provided in (a) and/or (b).

If the voters do not approve Proposition 47 and/or the Kindergarten-University Public Education Facilities Bond Act of 2004, any Preliminary Application accepted for processing by the OPSC as provided in (a) and/or (b) as appropriate will be returned unprocessed to the district.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.10 and 17078.20, Education Code.

Section 1859.142. Preliminary Apportionment Eligibility Criteria.

A district may apply for a Preliminary Apportionment by submittal of Form SAB 50-08 if all of the following criteria are met:

- (a) The district has demonstrated that it has SFP new construction eligibility under Education Code Section 17071.75.
- (b) The project for which the district is requesting funding has not received an apportionment under the LPP, the SFP or other Proposition 1A funds, with the exception of apportionments prior to November 5, 2002 pursuant to Section 1859.81.1(e).
- (c) At least 75 percent of the number of pupils requested on Form SAB 50-08 are Qualifying Pupils from a Source School(s) as determined in Section 1859.143.
- (d) The General Location of a proposed school meets the criteria of Education Code Section 17078.22(a)(3) or (b).

If the proposed school will serve a combination of elementary school pupils and middle school pupils, the General Location of the school for purposes of (d) above shall be based on the highest grade served.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.18 and 17078.22, Education Code.

Section 1859.143. Determination of Source School Qualifying Pupil Baseline Eligibility.

After the CDE Source School List has been published by the CDE, the Qualifying Pupils for a Source School shall be determined as follows:

- (a) Multiply the Useable Acres of the Source School by:
 - (1) 86 pupils per acre for a Source School identified as elementary on the CDE Source School List.
 - (2) 68 pupils per acre for a Source School identified as a middle school or a high school on the CDE Source School List.
- (b) Determine the latest CBEDS enrollment for the Source School as of the date the district submitted the Preliminary Application to the OPSC.
- (c) Subtract the amount determined in (a) from the amount determined in (b). The difference is the Qualifying Pupils baseline eligibility for the specific Source School.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.18, Education Code.

Section 1859.144. Adjustments to the Source School Qualifying Pupil Baseline Eligibility.

The Source School Qualifying Pupil baseline eligibility determined in Section 1859.143 will be adjusted as follows:

- (a) Reduced by the number of Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).
- (b) Increased by the Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c) that has been rescinded pursuant to Section 1859.148.
- (c) Increased/decreased for changes in CBEDS enrollment in subsequent enrollment reporting years.
- (d) Increased/decreased for changes in the Useable Acres originally reported on the CDE Source School List.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.18, Education Code.

Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
 - (1) \$5,226.82 for each elementary school pupil.
 - (2) \$5,533.65 for each middle school pupil.
 - (3) \$7,225.94 for each high school pupil.
 - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
 - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (e) An amount for site development cost determined, at the option of the district, by one of the following:
 - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
 - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
 - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
 - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
 - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
 - (3) The value of the property as determined in Section 1859.145.1(a)(1) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

- (h) For purposes of COS projects, an amount equal to ~~12 percent~~ of the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows: for all Preliminary Applications received no later than May 1, 2003.
- (1) Subtract 1.31 from the January Class B Construction Cost Index in effect at the time of Preliminary Apportionment.
- (2) Divide the difference determined in (1) by 1.31. Round to four decimal places.
- (3) Divide the quotient in (2) by the number of years between January 1999 and the January Class B Construction Cost Index in (1) above.
- (4) Multiply the quotient in (3) by four. Round to two decimal places.
- For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2003.
- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
- (j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.145.1. Preliminary Apportionment Site Acquisition Value.

- (a) If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:
- ~~(a)~~(1) The value of the property determined by one of the following:
- ~~(1)~~(A) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application or Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not exceed the proposed useable acreage requested on Form SAB 50-08 or Form SAB 50-09, as appropriate.
- ~~(2)~~(B) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50-08 or Form SAB 50-09, as appropriate. Historical information that may be considered to determine land cost may include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a period of up to two years prior to the date the Preliminary Application was submitted to the OPSC.
- ~~(b)~~(2) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:

- ~~(1)~~(A) 21 percent of the value determined in (a)(1).
- ~~(2)~~(B) The sum of the following:
- ~~(A)~~1. The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
- ~~(B)~~2. The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
- ~~(3)~~(C) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the General Location.
- ~~(e)~~(3) Four percent of the amount determined in (a)(1), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- ~~(d)~~(4) For allowable costs of hazardous material/waste removal and remediation costs, one-half times the value of the property determined in either (a)(1)(A) or (a)(2)(B), above.
- (b) If the Preliminary Application includes a request for hazardous waste removal required on an existing school site, the preliminary value for site acquisition funding shall be the sum of the following:
- (1) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide an amount, for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the Preliminary Apportionment will be used if all the following are met:
- (A) The Preliminary Application request is for additional school facilities on an existing school site.
- (B) The Preliminary Application request does not include a funding request for site acquisition costs allowed pursuant to Sections 1859.145.1(a).
- (C) The existing school site where the Preliminary Apportionment will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
- (D) The hazardous material cleanup costs are required by the DTSC.
- (2) If all the criteria in subsection (b) are met, the allowable hazardous waste removal cleanup costs shall be all the following:
- (A) The costs for preparation of the POESA, the PEA and the RA.
- (B) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
1. The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
2. The costs may not include continuous operational and maintenance costs associated with the RA.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.13, 17078.10, Section 17072.18 and 17078.24, Education Code.

Section 1859.146. Preliminary Apportionment Funding Priorities.

If the amount of the Preliminary Applications received pursuant to Section 1859.141 exceed the funds available, the Board shall first apportion those Preliminary Applications that will house pupils from Source Schools with the highest pupil density levels. The calculation in (a) through (e) below is made independently for each Source School from which Qualifying Pupils are assigned. All calculations are rounded up to four decimal places. The pupil density level for the Preliminary Application is the amount determined in (f) as follows:

- (a) Divide the latest CBEDS enrollment of the Source School by the Useable Acres of the Source School as shown on the CDE Source School List.
- (b) Divide the quotient determined in (a) by:

- (1) 115 if the Source School is identified as an elementary school on the CDE Source School List.
- (2) 90 if the Source School is identified as a middle school or a high school on the CDE Source School List.
- (c) Subtract 1 from the quotient determined in (b).
- (d) Divide the Source School's Qualifying Pupils by the total Qualifying Pupils assigned.
- (e) Multiply the difference determined in (c) by the quotient determined in (d).
- (f) Add the product(s) determined in (e) for each Source School the district assigned Qualifying Pupils from to meet the 75 percent requirement in Section 1859.142(c).

All Preliminary Applications received from a district will be processed in the date order received by the OPSC. If more than one Preliminary Application is received on the same day, those applications will be processed by the OPSC based on the priority order assigned to those applications by the district on Form SAB 50-08.

If two or more Preliminary Applications have the same pupil density level, the Board shall first apportion that Preliminary Application that was received first by the OPSC.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.20, Education Code.

Section 1859.147. Conversion of Preliminary Apportionment.

When a Preliminary Apportionment is converted to a Final Apportionment, all the following criteria must be met:

- (a) The district must have current New Construction Eligibility sufficient to support at least 75 percent of the pupils the district requested and received the Preliminary Apportionment, except as allowed in (d).
- (b) The Final Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (c) A district seeking to convert a Preliminary Apportionment to a Final Apportionment shall complete and file Form SAB 50-04, which requests funding for at least 75 percent, but not more than 100 percent, of the pupils the district requested and received the Preliminary Apportionment.
- (d) In lieu of (c), when the district's enrollment has decreased to less than 75 percent of the pupils requested for the project's Preliminary Apportionment, the district may utilize any SFP eligibility justified for its conversion to a Final Apportionment.

It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required by Section 1859.142(c) at the time the application is converted to a Final Apportionment.

If the district is unable to meet the criteria in this Section, the Preliminary Apportionment shall be rescinded pursuant to the provisions of Section 1859.148.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.27, Education Code.

Section 1859.148. Time Limit on a Preliminary Apportionment.

- (a) A Preliminary Apportionment not converted or requested to be converted to a Final Apportionment shall be rescinded:
 - (1) After one year from the date the Preliminary Apportionment was made unless the CDE has determined:
 - (A) There is at least one approvable site for the project within the General Location; and,

- (B) The General Location of the proposed school will serve the Qualifying Pupils assigned to the Preliminary Application.
- (2) After four years from the date the Preliminary Apportionment was made unless the district received approval of an extension pursuant to Section 1859.148.1.
- (3) After five years from the date the Preliminary Apportionment was made if the district qualified for an extension pursuant to Section 1859.148.1.
- (b) If a Preliminary Apportionment that did not have an advance release of funds pursuant to Section 1859.153 is rescinded, the following will occur:
 - (1) The SFP new construction baseline eligibility will be increased for the pupils assigned to the Preliminary Application not previously included in an apportionment pursuant to Section 1859.81.1(e). The previous design only apportionment, prior to November 5, 2002, shall be reduced to cost incurred with a corresponding SFP new construction baseline eligibility adjustment and closeout pursuant to Section 1859.106.
 - (2) The Qualifying Pupil baseline eligibility will be increased by the Qualifying Pupils assigned to meet the 75 percent requirement in Section 1859.142(c) of the Preliminary Application.
 - (3) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).
 - (4) The district may request funding for the proposed project again, without restriction under any SFP Program, provided the project meets the eligible criteria of that specific program. Re-submittal of the funding request may occur as follows:
 - (A) If the project was rescinded pursuant to (a)(1) or (a)(3), anytime after the Preliminary Apportionment is rescinded.
 - (B) If the project was rescinded pursuant to (a)(2) and the final plans for the project are not complete within four years of the Preliminary Apportionment, anytime after the Preliminary Apportionment is rescinded.
 - (C) If the project was rescinded pursuant to (a)(2) and the final plans for the project were completed within four years after the Preliminary Apportionment, anytime after a period of five years from the date of the Preliminary Apportionment.
 - (5) The Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
- (c) If a Preliminary Apportionment that had an advance release of funds as provided in Section 1859.153 and/or an apportionment pursuant to Section 1859.81.1(e) prior to November 5, 2002, is rescinded pursuant to (a)(2) or (a)(3), the following will occur:
 - (1) The remaining Preliminary Apportionment, not released to the district, shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
 - (2) Funds released pursuant to Sections 1859.81.1(e) and 1859.153 shall be reduced to cost incurred and closeout pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Application. Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
 - (3) The Qualifying Pupil baseline eligibility will be adjusted proportionately to the adjustment in (c)(2) and maintain the ratio of SFP New Construction Eligibility to Qualifying Pupils assigned to meet the requirements in Section 1859.142(c) of the Preliminary Application.
 - (4) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).
 - (5) The district may request funding for the proposed project again, in accordance with (b)(4), provided this rescinded Preliminary Apportionment is disclosed.

Should the district not submit Form SAB 50-04 pursuant to Section 1859.150 within the time limits of this Section, the district must report the final expenditures on the project on the Form SAB 50-06 to the OPSC within 30 days of the OPSC notification. If the

expenditure report for funds released pursuant to Section 1859.153(a), (b) and/or (c) is not received within the 30-day period, the OPSC will recommend that the Preliminary Apportionment be rescinded and any interest earned on State funds be returned to the State.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.22 and 17078.25, Education Code.

Section 1859.148.1. Preliminary Apportionment Time Limit Extension.

A district that has received a Preliminary Apportionment may request a one-year extension of the time limit on the apportionment prescribed in Section 1859.148. The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The district has provided evidence of both of the following:
 - (1) The CDE has made a contingent or final approval of the proposed site.
 - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.25, Education Code.

Section 1859.149. Preliminary Apportionment Progress Reporting Requirements.

Until a Preliminary Apportionment is converted to a Final Apportionment, the district shall submit an annual progress report of the project to the OPSC. The reports are due annually, beginning in the twelfth month after the date the Preliminary Apportionment was made.

- (a) The first progress report shall include:
 - (1) A statement as to whether the CDE has made a certification that there is at least one approvable site for the project within the General Location and whether the General Location will serve the Qualifying Pupils assigned to the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).
 - (2) A copy of the CDE letter supporting the certifications in (a)(1), if appropriate.
 - (3) Progress towards completing the requirements for a Final Apportionment as provided in Education Code Section 17078.25(d).
- (b) Subsequent progress reports shall include the progress made towards completing the requirements for a Final Apportionment provided in Education Code Section 17078.25(d).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.25, Education Code.

Section 1859.150. Final Apportionment.

The amount of the Final Apportionment is based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Apportionment is submitted and accepted for processing by the OPSC. The Board shall convert the amounts determined below from the Preliminary Apportionment to the Final Apportionment:

- (a) If the Final Apportionment request is equal to or less than the Preliminary Apportionment, the Board shall convert the Preliminary Apportionment to a Final Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as

appropriate) Critically Overcrowded School Facilities Account. The Final Apportionment shall become the full and final apportionment for the project.

- (b) If the Final Apportionment request is greater than the Preliminary Apportionment, the Board shall:
- (1) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is greater than the difference in the Final Apportionment and the Preliminary Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred from the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account and converted to a Final Apportionment for the project. The combined Final Apportionments shall become the full and final apportionment for the project.
 - (2) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is less than the difference in the Final Apportionment and the Preliminary Apportionment. The balance of the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account shall be converted to a Final Apportionment for the project. Any amount of the Final Apportionment request not converted to a Final Apportionment shall be placed on a Final Apportionment Unfunded List and may be converted to a Final Apportionment at a later date pursuant to the provisions of Section 1859.150.1.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.27, Education Code.

Section 1859.150.1. Final Apportionment Unfunded List.

Any portion of a Final Apportionment request not converted to a Final Apportionment pursuant to Section 1859.150(b)(2), shall be placed on a Final Apportionment Unfunded List based on the date of the Final Apportionment. If, at a later date, funds become available in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as a result of rescissions pursuant to Section 1859.148, the Board shall convert the amounts shown on the Final Apportionment Unfunded List to a Final Apportionment based on the oldest date first and subject to the following:

- (a) If the funds available are sufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the amount shown shall be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.
- (b) If the funds available are insufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the district may:
 - (1) Request that the funds available be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.
 - (2) Request that the project not be converted until there are sufficient funds to convert the entire amount shown on the Final Apportionment Unfunded List.

The amounts shown on the Final Apportionment Unfunded List are not subject to any adjustments as prescribed in Section 1859.71.

If the amount shown on the Final Apportionment Unfunded List cannot be converted to a Final Apportionment because there are no funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account after all rescissions and final expenditure audits pursuant to Section 1859.148 have been made, the amount converted previously shall become the full and final apportionment for the project.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.27, Education Code.

Section 1859.151. Preliminary Apportionment District Matching Share Requirement.

Once a Preliminary Apportionment is converted to a Final Apportionment or has funds released pursuant to Section 1859.153, the district will be subject to the district matching share requirement as described in Section 1859.77.1.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.30, 17078.10 and 17078.24, Education Code.

Section 1859.152. Eligible Expenditures.

SFP grants provided as the Final Apportionment or pursuant to Section 1859.153 must comply with Education Code Section 17072.35. Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after April 29, 2002.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.35, 17078.10, and 17078.27, Education Code.

Section 1859.153. Preliminary Apportionment Fund Release.

Once the provisions in Section 1859.148(a)(1) have been met, a district that meets the following may request an advance release of funds from a Preliminary Apportionment:

- (a) A district that meets the financial hardship criteria in Section 1859.81 is eligible for an amount not to exceed 40 percent of the amount determined in Section 1859.145(a), less any funds pursuant to Section 1859.145(i) and/or (j).
- (b) A district that meets the financial hardship criteria in Section 1859.81 is eligible for an amount, not to exceed the Preliminary Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-08 pursuant to Section 1859.141.
- (c) A district is eligible for an amount, not to exceed the Preliminary Apportionment, for environmental hardship site acquisition pursuant to Section 1859.75.1 after submittal of a Form SAB 50-08 pursuant to Section 1859.141.

Qualified districts may request a separate advance release of funds for the design and for the site acquisition for the same project. A district seeking an advance release of funds pursuant to Section 1859.153(a) and/or (b) must have been approved and maintained financial hardship status pursuant to Section 1859.81. The OPSC will release State funds included in a Preliminary Apportionment pursuant to (a), (b) or (c) to the district after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.148. Once the Preliminary Apportionment is converted to a Final Apportionment pursuant to Section 1859.150, the district may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.30 and 17078.27, Education Code.

Section 1859.154. Fund Distribution.

- (a) From the funding made available from Education Code Section 100620(a)(5), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:
 - (1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(a).
 - (2) Multiply the amount determined in (1) by 15 percent.
 - (3) Subtract the sum of the amounts determined in (1) and (2) from \$1.7 billion. If negative number, the amount is zero.
- (b) From the funding made available from Education Code Section 100820(a)(3), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:
 - (1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(b).
 - (2) Multiply the amount determined in (1) by 15 percent.
 - (3) Subtract the sum of the amounts determined in (1) and (2) from \$2.44 billion. If negative number, the amount is zero.
- (c) Any funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not needed for purposes of converting projects to a Final Apportionment shall be transferred to the SFP New Construction Account.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.27, 17078.30, 100620 and 100820, Education Code.

Section 1859.155. Preliminary Apportionment.

The Board shall approve Preliminary Applications from the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as follows:

- (a) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are equal to or less than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve all Preliminary Apportionment requests.
- (b) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are greater than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve Preliminary Apportionment in accordance with the funding priorities described in Section 1859.146. Any Preliminary Application that cannot be fully approved shall be returned unprocessed to the district.

All funds approved as a Preliminary Apportionment shall be transferred to the Restricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account. Any funds not approved as a Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.10, 17078.30, 100620 and 100820, Education Code.

State Allocation Board Implementation Committee
November 7, 2003

Lease Lease-Back Agreements
(Education Code Section 17406)

Issue

To review the use of Lease Lease-Back Agreements (LLB) for project delivery of facilities funded through the School Facility Program (SFP).

Background

Education Code (EC) Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

To date, the Office of Public School Construction (OPSC) has taken no position on when the use of LLB arrangements under EC Section 17406 is appropriate under the assumption that the obligation to determine the appropriate and legitimate use of any contract delivery method allowed under law rests with the school district. The Office has focused instead on providing guidance to those districts using LLB arrangements to insure that the process used is consistent with SFP law and regulations as well as laws relating to the use of the state general obligation bonds.

Description

As a result of an increasing number of inquiries to the OPSC regarding issues related to the use of EC Section 17406, the OPSC presented proposed changes to the State Allocation Board's regulations concerning the interface of LLB agreements and the SFP. The presentation, made in September 2003, also included a report to the SAB regarding the use of LLB agreements as a delivery method for projects funded under the SFP. It was apparent that this delivery method was being used or considered by a significant number of districts and the OPSC wished to inform the Board that projects constructed using the LLB method were being presented for funding on consent calendars. The report and the proposed regulation changes were the result of discussions at four separate Implementation Committee meetings.

When the item was presented to the SAB, some members expressed concerns about the effect that widespread use of EC Section 17406 might have on the Public Contract Code (PCC) competitive bidding requirements. The SAB declined to take action on the recommended regulation changes and asked that staff prepare further information relating to the issue for consideration at a future meeting.

Competitive Bidding Concerns with LLB

While some advocates of the use of EC Section 17406 argue that it is less cumbersome than the competitive bidding process and that it allows a team approach to the development of the project, it is important to keep in mind the reasons that competitive bid requirements were added to the PCC. The intent was not to make it harder to complete public works projects, but to ensure that State funds were being used in an efficient and cost-effective manner. The goal of the Legislature in enacting the code was¹:

1. To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds, and;
2. To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices, and;
3. To eliminate favoritism, fraud, and corruption in the awarding of public contracts

The growing use of EC Section 17406 when project financing is not involved means that significant numbers of projects and significant sums of public funding are not being subjected to the checks and balances of the competitive bid process. Recent interpretations made by some interested in furthering the use of EC Section 17406 are so broad as to make the public contract competitive bid requirements moot, effectively eliminating competitive bidding on all new construction and modernization public school projects whether funded locally or in conjunction with the State program.

The Use of EC Section 17406

Lease lease-back agreements as a method of financing

EC Section 17406, taken in context with the entire article on Leasing Property, provides a financing mechanism available for school districts in the absence of State and/or local funding. A school district may enter into a LLB agreement to acquire or construct a facility without competitive bid when the property on which the project is to be constructed is owned by the district. The construction is to be financed by the developer/lessor and provided to the district through a year-to-year lease.

Lease lease back agreements in the SFP

Under the provisions of the SFP, state funding is provided for 50 percent of a new construction project or 60 percent of a modernization project. The balance of the project costs must be provided by the district through any available local funding source. The district portion is the district "matching share" and must be expended before the notice of completion is filed for the project. Because the state share and the district match are sufficient to completely fund the project, it is unnecessary to enter into a LLB agreement. Therefore, LLB agreements may only be used for new construction or modernization projects under the following circumstances:

¹ Public Contracts Code, Section 100

- The district does not intend to seek state funding for the project, or
- At the time the LLB agreement is made, state funding for the project is not available.

If the LLB agreement is signed at a time when the project is eligible for state funding and the state funding is available, it will be assumed that the project has been funded from local sources and state funding is not necessary. Applications for the projects will not be accepted.

Competitive Selection Processes

Currently, legislation governing the use of design build processes allows an alternative to competitive bidding by requiring a competitive selection process. In a similar manner, professional services may be also be procured without bidding. Staff believes that the legislation governing the use of LLP agreements should have similar public safeguards.

ATTACHMENT A

Potential Regulatory Amendments

Implementation of Lease Lease-Back Regulations

State Allocation Board Implementation Committee Meeting, November 7, 2003

1859.23 SFP Application for Funding of Projects Leased Under the Provisions of Education Code Section 17406.

A district may receive funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided that the district has title to the site and all of the following are met:

- a) The project costs are financed by the developer of the district owned site.
- b) The lease agreement creates no immediate indebtedness for the aggregate installments and confines the district's liability to each annual installment as it falls due.
- c) The lease agreement was signed at a time when state funding was not available for the project.
- d) The lease agreement contains or will contain a purchase option that, when exercised, shall terminate the lease.
- e) The title of all improvements shall vest with the district no later than 180 days after either receiving an adjusted grant apportionment from the Board or filing of the last notice of completion for the project, whichever is later.
- f) State bonds funds including the district's local matching share required pursuant to Section 1859.77.1 or 1859.79 shall not be used for lease or rental payments on the project.
- g) All requirements of Chapter 12.5 have been met including but not limited to compliance with SFP Regulation Section 1859.70 and Labor Code Section 1771.7.

ATTACHMENT B

Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

- (a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13

of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board
Implementation Committee
November 7, 2003**

Financial Hardship Bonded Indebtedness Change

ISSUE

Senate Bill (SB) 303, Chapter 55, Statutes of 2003 requires changes be made to the current School Facility Program (SFP) regulations as it relates to financial hardship bonded indebtedness.

BACKGROUND

Current SFP regulations require school districts to substantiate that they have insufficient funds to contribute to their projects and show reasonable efforts in generating local revenue for their project's funding share in order to qualify for financial hardship status and receive additional state funding. The current SFP financial hardship regulations provide that school districts may be eligible for financial hardship status, after meeting certain requirements, when all their current outstanding indebtedness, at the time of the request, is at least 60 percent of the district's total bonding capacity.

SB 303 restricts the type of debt that is recognized in meeting the 60 percent of the district's total bonding capacity requirement to only that debt that is issued for the purpose of constructing school facilities for the school district.

DISCUSSION

Based on this change, school districts with other non-school facility debt may have a more difficult time meeting financial hardship criteria and will no longer be able to utilize this debt in meeting the 60 percent reasonable effort requirement.

RECOMMENDATION

Amend the attached regulation section 1859.81 (c) as indicated, present the proposed regulation amendments to the State Allocation Board and begin the regulatory process.

Amend Regulation Section 1859.81 as follows:

Section 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
 - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
 - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
 - (3) Subtract (b)(2) from (b)(1).
 - (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
 - (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
 - (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
 - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
 - (3) It is a County Superintendent of Schools.
 - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
 - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10 and 17075.15, Education Code.